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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/998,560	11/29/2001	Kristina Vogt	Mo-6644/LeA 34,976	5906
34947	7590	01/24/2005	EXAMINER	
LANXESS CORPORATION PATENT DEPARTMENT/ BLDG 14 100 BAYER ROAD PITTSBURGH, PA 15205-9741			UMEZ ERONINI, LYNETTE T	
		ART UNIT		PAPER NUMBER
				1765

DATE MAILED: 01/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/998,560	VOGT ET AL.	
<b>Examiner</b>	<b>Art Unit</b>		
	Lynette T. Umez-Eronini	1765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 11/12/2004.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-16 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-16 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 29 November 2001 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimizu (US 4,857,290).

As pertaining to claims 1, 8, and 11, Shimizu teaches a process for producing silica comprising: treating an acidic silicate sol composition with hydrogen peroxide, adjusting the pH of the sol to 0 to 5 by adding a base selected from the group consisting of sodium hydroxide and potassium hydroxide (claim 1), which reads on,

A polishing slurry comprising:

(a) a silica sol that contains  $\text{SiO}_2$  particles, and  
(b) hydrogen peroxide and a base in an amount that is sufficient to set the pH of the polishing slurry at a pH that falls within the range of 5 to 11.5.

Shimizu differs in failing to specify from 2.5 to about 70% by volume of silica sol that contains from 15 to 40% by weight  $\text{SiO}_2$  particles having a mean particle size of less than 300 nm, 6 to 10% by volume of hydrogen peroxide and the slurry at a 22°C, in **claim 1**;

the percent by weight of  $\text{SiO}_2$  in silica sol, **in claims 2-5**;  
the percent by weight of  $\text{SiO}_2$  in the slurry, as specified **in claim 6**;  
the percent by volume of hydrogen peroxide in the slurry, **in claim 7**;  
a pH ranging from 6 to about 10, **in claim 9** of the polishing slurry; and  
the removal rate of more than 300 Å/min, a Cu:Ta selectivity of more than 1:2, a  
Cu:dielectric selectivity of more than 1:1 or greater, **in claim 10**.

Shimizu further differs in failing to specify from about 2.5 to about 70% by volume  
of silica sol containing  $\text{SiO}_2$  particles, from about 6 to 10% by volume of hydrogen  
peroxide and the slurry at a 22°C, a Ta removal rate of more than 300 Å/min, a Cu:Ta  
selectivity of more than 1:2, a Cu:dielectric selectivity of more than 1:1 or greater, and  
the Ta removal rate is  $\geq$  1.5 times the removal rate of a dielectric that can be polished  
by the slurry, **in claim 11**;

the mean particle size of less than about 300 nm and the percent by weight of  
 $\text{SiO}_2$  in the silica sol, **as recited in claim 12**;

the percent by weight of  $\text{SiO}_2$  in, **in claims 13-15**; and

the percent by weight of  $\text{SiO}_2$  in the slurry, **as recited in claim 16**.

It would have been obvious to one having ordinary skill in the art at the time of  
the claimed invention to use any combination of parameters such as the removal rate,  
polish selectivity, pH, temperature, percent by weight and percent by volume of the  
components of the slurry as taught in the Shimizu's reference and including those  
presented in applicants' claim for the purpose of producing a high purity sol (Shimizu,  
column 3, lines 33-40).

***Response to Arguments***

3. Applicants' arguments filed 11/12/2004 have been fully considered but they are not persuasive. Applicants traverse the 103 rejection of claims 1-16 over Shimizu (US 4,857,290) as failing to teach 6% to about 10% by volume of hydrogen peroxide, in claim 1 and weight percent of SiO<sub>2</sub>, the percent by volume of hydrogen peroxide, pH, and removal rates as recited in claims 2-16. Applicants argue Shimizu teaches using hydrogen peroxide in quantities of 0.5% to 1% by weight for the purification of silica in order to remove elements like U, Fe, Ti, Al etc. and teaches away from applying hydrogen peroxide at concentrations greater than 1% by weight (Shimizu, column 3, lines 22-31).

Shimizu's failures are acknowledged. However, Applicants' arguments are unpersuasive because: Shimizu teaches an acidic silicate sol composition is treated with hydrogen peroxide and is adjusted to a pH from 0 to 5 by adding a base selected from the group consisting of sodium hydroxide and potassium hydroxide (claim 1). Since Shimizu teaches the said combination of components of a polishing slurry as claimed by applicants and which is known in the production of silica sol, then it would have been obvious to one having ordinary skill in the art at the time of the claimed invention to use any combination of parameters such as the removal rate, polish selectivity, pH, temperature, percent by weight and percent by volume of the components of the slurry as taught in the Shimizu's reference that would effectively accomplish the disclosed composition because it has been held that there is no invention where the difference in proportions is not critical and was ascertained by

routine experimentation because the determination of workable ranges is not considered inventive. See *In re Swain and Adams*, 70 USPQ 412 (CPA 1946).

***Conclusion***

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lynette T. Umez-Eronini whose telephone number is 571-272-1470. The examiner is normally unavailable on the First Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nadine Norton can be reached on 571-272-1465. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Itue

January 12, 2005

*NADINE NORTON*  
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SUPERVISORY PATENT EXAMINER  
*Nadine*